

CHAPTER 051

MINIMUM STANDARDS FOR BACKGROUND CLEARANCES

FOR LICENSED CHILD DAY CENTERS

PART I.

INTRODUCTION.

22 VAC 15-051-10. Definitions.

The following words and terms, when used in conjunction with this chapter, shall have the following meanings:

“Applicant for licensure” means the person or persons applying for licensure. In the case of a sole proprietorship, the applicant is the individual owner. In the case of partnership, the applicants are all the partners. If the applicant is a corporation, limited liability company, public agency or similar entity, the applicant must designate at least one individual who must comply with the applicant’s obligation on its behalf.

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“Background clearances” means a sworn disclosure statement, a criminal record report, and a central registry report on child abuse and neglect.

“Barrier crimes” means convictions of crimes specified by § 63.1-198.1 of the *Code of Virginia* and are also listed in this chapter under 22 VAC 15-051-30.

“Center” means a licensed child day center.

“Central Criminal Records Exchange” means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police.

“Central registry report” means the information resulting from a search of the Child Abuse and Neglect Central Registry.

“Child Abuse and Neglect Central Registry” means the information system containing founded cases of child abuse and neglect within the Commonwealth of Virginia.

“Child abuse/neglect history record request” means the Virginia Department of Social Services, Child

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Protective Services Unit form used to authorize the Department to generate a central registry report on a person.

“Child day center” means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location, except for those exempted in ? 63.1-196.001 of the *Code of Virginia*.

“Child day center system” means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, fifty or more child day center sites in the Commonwealth.

“Commissioner” means the Commissioner of the Virginia Department of Social Services.

“Contract agency” means an entity with which the center or a parent has an agreement to provide services to a child or children while attending the center.

“Contract employee” means a person with whom the center or a parent has an agreement to provide services to a child or children while attending the center.

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“Criminal history record request” means the Department of State Police form used to authorize the State Police to generate a criminal record report on a person.

“Criminal record report” means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The reports are on convictions within the Commonwealth.

“Department” means the Department of Social Services.

“Disqualifying background” means having (i) ever been the subject of a founded complaint of child abuse or neglect even if his record has been purged from the Child Abuse and Neglect Central Registry system or (ii) a barrier crime conviction. For purpose of this regulation, no person shall be considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person shall be considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

“Involved in the day-to-day operations of the center” means being :

1. in a supervisory or management position, making daily decisions regarding the operation of the center; or
2. counted by the center for purposes of staff-to-children ratios.

“Licensed” means having obtained licensure through the Department of Social Services as required in General Procedures and Information for Licensure, 22 VAC 15-80-10 et seq.

“Parent-volunteer” means someone supervising, without pay, a group of children which includes the parent-volunteer’s own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to §§ 63.1-198.1 and 63.1-198.2 of the *Code of Virginia*.

“Staff volunteer” means an unpaid person who is counted in the staff-to-children ratios or any person working with a child without supervision of a staff person or otherwise beyond the sight of a staff person.

“Sworn disclosure statement” means a statement completed by a person attesting to whether he has

ever been (i) convicted of or the subject of pending charges of a barrier crime within the Commonwealth or equivalent offense outside the Commonwealth, or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.1-197, 63.1-198, and 63.1-198.1.

22 VAC 15-051-20. Licensed child day center systems.

The regulations set forth in this Chapter shall also apply to licensed child day center systems.

22 VAC 15-051-30. Barrier crimes specified by § 63.1-198.1 of the Code of Virginia.

A. Crimes as set out in the Code of Virginia:

1. Murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

2. Malicious wounding by mob as set out in § 18.2-41;

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3. Abduction as set out in § 18.2-47 A;

4. Abduction for immoral purposes as set out in § 18.2-48;

5. Assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

6. Robbery as set out in § 18.2-58;

7. Car jacking as set out in § 18.2-58.1;

8. Extortion by threat as set out in §18.2-60;

9. Any felony stalking violation as set out in § 18.2-60.3;

10. Sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

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11. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

12. Burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2;

13. Any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et. seq.) of Chapter 7 of Title 18.2;

14. Drive by shooting as set out in § 18.2-286.1;

15. Use of a machine gun in a crime of violence as set out in § 18.2-289;

16. Aggressive use of a machine gun as set out in § 18.2-290;

17. Use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A;

18. Pandering as set out in § 18.2-355;

19. Crimes against nature involving children as set out in § 18.2-361;

20. Incest as set out in § 18.2-366;

21. Taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1;

22. Abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314;

23. Obscenity offenses as set out in § 18.2-374.1;

24. Possession of child pornography as set out in § 18.2-374.1:1;

25. Electronic facilitation of pornography as set out in § 18.2-374.3;

26. Abuse and neglect of incapacitated adults as set out in § 18.2-369;

27. Employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379;

28. Delivery of drugs to prisoners as set out in § 18.2-474.1;

 29. Escape from jail as set out in § 18.2-477;

 30. Felonies by prisoners as set out in § 53.1-203.
- B. A felony other than those specified in subsection A of this section for which a person has been convicted in the five years prior to the application date for employment, staff volunteer service, or licensure.
- C. Convictions include:
1. Prior adult convictions;

 2. Juvenile convictions and adjudications of juvenile delinquency, if the offenses involved would have been barrier crimes had the offender been an adult at the time of the offense.
- D. Convictions in other states that are equivalent to those specified in this section.

PART II.

BACKGROUND CLEARANCES AT INITIAL LICENSURE.

22 VAC 15-051-40. Background clearances at initial application for licensure.

A. The applicant or applicants shall obtain background clearances on the following persons prior to initial licensure.

1. Applicant or applicants for licensure;
2. Employees, contract employees, officers and board members who are expected to be (i) alone with, in control of, or supervising one or more children or (ii) involved in the day-to-day operations of the center.

- B. The center shall inform the person that background clearances are being obtained.

- C. Subsection A 2 applies to employees who have been employed more than twenty-one days. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of the person being employed.

- D. Persons who have had background clearances by the child day center are not required to obtain new clearances when the initial application for licensure is due to:
 - 1. A change in site location;

 - 2. The entity opening a new site location;

 - 3. A change in ownership or sponsorship; or

 - 4. Licensing of a religious exempt center.

- E. A center cannot be licensed if a person listed in subsection A of this section has a disqualifying background.

PART III.

BACKGROUND CLEARANCES AFTER INITIAL LICENSURE.

22 VAC 15-051-50. Background clearances after initial licensure.

- A. The center shall obtain background clearances for persons listed in the following table who are (i) alone with, in control of, or supervising one or more children or (ii) are involved in day to day operations of the center. The following table states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u>	<u>Criminal History Report</u>	<u>Central Registry Report</u>
	<u>a.</u>	<u>b.</u>	<u>c.</u>

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<u>Required For</u>	<u>Sworn Disclosure</u>	<u>Criminal History Report</u>	<u>Central Registry Report</u>
	<u>a.</u>	<u>b.</u>	<u>c.</u>
<u>1. Employees</u>	<u>Prior to employment</u>	<u>Within 21 days of employment</u>	<u>Within 21 days of employment</u>
<u>2. Contract Employees</u>	<u>Prior to providing service at the center</u>	<u>Within 21 days of when first providing service at the center</u>	<u>Within 21 days of when first providing service at the center</u>
<u>3. Officers and Board Members</u>	<u>Prior to serving</u>	<u>Prior to serving</u>	<u>Prior to serving</u>

B. The center shall obtain background clearances for staff volunteers who are alone with children in the performance of their duties. The following table states when each clearance is required.

<u>Required For</u>	<u>Sworn Disclosure</u>	<u>Criminal History Report</u>	<u>Central Registry Report</u>
	<u>1.</u>	<u>2.</u>	<u>3.</u>
<u>Staff volunteers</u>	<u>Prior to</u>	<u>Within 21 days of</u>	<u>Within 21 days of</u>

	<u>volunteering</u>	<u>volunteering</u>	<u>volunteering</u>
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C. Facilities using contract employees whether independent contractors or those connected with a contract agency shall either obtain background clearances or:

1. View the required background clearances supplied by the agency or independent contractor;

2. Write on the criminal record report copy that it is a photocopy of an original that the center verified; and

3. Accept a background clearance for that is not dated more than 12 months prior to the date on which the contractor begins providing services at the center.

D. If the person or persons designated as the applicant or licensee changes, the center shall obtain background clearances on the new designated person or persons.

E. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of the person being employed or volunteering.

- F. The center shall inform the person that background clearances are being obtained.

PART IV.

CONSEQUENCES ASSOCIATED WITH BACKGROUND CLEARANCES.

22 VAC 15-051-60. Consequences associated with background clearances.

- A. No center shall permit a person listed in Part III, 22 VAC 15-051-50 or the licensee, to assume or maintain his duties with the center if the center has knowledge that the person has a disqualifying background.
- B. The department may deny a license or impose sanctions, if the center fails to comply with terms of

this chapter.

- C. If a person is denied employment, because of information appearing in a background clearance, the center shall provide the person with a copy of the documents upon which the center relied in making its determination.
- D. If the Department becomes aware that a person listed in Part III, 22 VAC 15-051-50 or the licensee has a disqualifying background, the department shall be permitted to release this information to the centers which have a legitimate interest.

PART V.

VERIFYING BACKGROUND CLEARANCES.

22-VAC 15-051-70. Verifying background clearances.

- A. Background clearances shall be considered valid only if the clearance meets the following criteria:

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CRITERIA FOR BACKGROUND CLEARANCES		
	<u>Document</u>	<u>From</u>
	<u>a.</u>	<u>b.</u>
<u>1. Sworn disclosure statement</u>	<u>Original statement using either Department of Social Services model form or appropriate center developed form.</u>	<u>The person completing the statement</u>
<u>2. Criminal record report.</u> <u>The report at a minimum shall be a criminal record clearance for the barrier crimes.</u>	<u>Original report</u>	<u>State Police Central Criminal Record Exchange</u>
<u>3. Central registry report</u>	<u>Original or copy of report</u>	<u>Department of Social Services Child Abuse & Neglect Central Registry</u>

B. A center shall not accept a required criminal record report or a central registry report that is dated

more than 90 days prior to date of employment, volunteering, or serving on the board.

- C. The department shall not accept a required criminal record report or a central registry report for the applicant or licensee that is dated more than 90 days prior to date of licensure or when the person is designated as the applicant or licensee.

- D. All background clearances shall be kept confidential. The center administrator, board president, licensee, or his designee shall receive reports on employees, contractors, and volunteers.

- E. The center designee shall review all background clearances and be charged with knowledge of all information contained in the clearance. The department shall verify the background clearances of applicants for licensure and licensees.

PART VI.

DURATION OF BACKGROUND CLEARANCES.

22 VAC 15-051-80 Duration of background clearances.

A. If a person leaves a center and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him. The center shall retain a copy of the report or reports. The center shall write on the criminal record report copy that it is a photocopy of an original that the center verified.

B. A background clearance shall remain valid at the center as long as no more than 12 months have lapsed from when a person:

1. Began a leave of absence;

2. Was terminated from employment; or

3. Was transferred to a center owned and operated by the same employer or entity.

Once a period of 12 consecutive months has expired, new background clearances shall be obtained.

C. When an officer or board member changes positions within the board or organization, additional background clearances are not required.

PART VII.

MAINTENANCE OF BACKGROUND CLEARANCES.

22 VAC 15-051-90. Maintenance of background clearances.

- A. Background clearances shall be made available by the center to the Department's representative upon request.

- B. Background clearances shall be maintained at the center where the person is an employee, contract employee, staff volunteer, or officer or board member.

- C. A center shall maintain at the primary work place, or designated location, the required background clearances.

- D. If a center is not a primary work place for a person, the center shall maintain at a designated location

the following:

1. A copy of the central registry report,
 2. An original sworn disclosure statement, and
 3. A copy of the original criminal record report with a statement that the center designee has viewed and verified the original.
- E. Background clearances shall be maintained for one year after a person terminates from the center.

PART VIII.

THE WAIVER.

22 VAC 15-051-100. The waiver.

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- A. Persons disqualified from employment, volunteering or serving as an officer or board member at a center or denied licensure as a child day center or as a child day center system operator, because of a child abuse or neglect founded complaint or conviction of a felony within the five years prior to the application date for licensure, employment, or staff volunteer service approval, may apply in writing for a waiver from the Commissioner.
- B. The waiver is allowed by ?63.1-198.4 of the *Code of Virginia*. Requirements for the waiver are in the Minimum Standards for Background Clearances 22-VAC 40-191-10 et seq.